IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Bail Appl..No. 4774 of 2007()

CRIME NO. 483/07 OF NILESHWARAM POLICE STATION

PETITIONER/ACCUSED:

K.V. SETHU, AGED 36 YEARS,
S/O. O.V. KUNHIRAMAN RAMNILAYAM, BANGALAM P.O.,
HOSDURG TALUK, KASARGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: RESPONDENT & STATE:

STATE OF KERALA,
REP. BY THE STATION HOUSE OFFICER, NEELESHWAR
POLICE STATION, REPRESENTED THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4774 OF 2007

Dated this the 7th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations for offences punishable, inter alia, under Sec.3(i)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act (for short ` the Act'). The de facto complainant – a person belonging to the Scheduled Caste who was driving an autorikshaw, allegedly splashed muddy water on the accused who was a pedestrian. Infuriated by the conduct of the de facto complainant, the petitioner allegedly assaulted him and showered abusive words on him. The de facto complainant is a person belonging to the Scheduled Caste. The petitioner is alleged to have used insulting and intimidatory words. In trading such intentional insult, the petitioner is alleged to have committed the offence punishable under Sec.3(i)(x) of the Act.

2. The petitioner has come to this Court with this application for anticipatory bail. In the light of the express prohibition under Sec.18 of the Act, the learned counsel for the petitioner was requested to explain how this petition for anticipatory bail is maintainable. The learned counsel for the petitioner submits that it is not enough if the police would conveniently incorporate the relevant section of law. But it must be seen whether, as a matter of fact, the allegation would constitute an offence punishable under Sec.3(i)(x) of the Act. If the allegations do not constitute such an offence and conveniently the officer who registers the F.I.R. either by deliberate intent or mistakenly included an allegation under Sec.3(i)(x) of the Act, that cannot operate to bar the jurisdiction of this Court under Sec.438 of the Cr.P.C., submits the learned counsel for the petitioner.

3. I am in ready agreement with the learned counsel for the petitioner on that interpretation and understanding of the prohibition under Sec.18 of the Act. It is not enough if such a section of offence is simply added; it will have to be considered whether there is a worthwhile allegation raised under Sec.3 of the Act in order to attract the bar under Sec.18 of the Act.

4. The question whether the allegation can be believed or

not cannot certainly be considered in view of the bar under Sec.18 of the Act. The learned counsel for the petitioner advances a contention that the allegation does not constitute an offence under Sec.3(i)(x) of the Act. The learned counsel contends that the spontaneous reaction of a person on whom muddy water was splashed by the driver of an autorikshaw negligently and rashly cannot be reckoned as intention insult. I am afraid, I am unable to accept the contention. The provisions of the Act is a classic instance where a laudable behavioral morality is attempted to be introduced by the provisions of a penal statute. The community to which the de facto complainant belongs is totally irrelevant in the dispute which had arisen – splashing of muddy water on the pedestrian by the autorikshaw driver. If, in the course of such a dispute between the autorikshaw driver and the accused, the caste name of the autorikshaw driver is unnecessarily introduced in the course of quarrel, it will have to be assumed and presumed at this stage that such introduction of the caste element into the conversation and dispute was deliberate and intentional. At any rate, to decide whether the offence Sec.3(i)(x) of the Act is alleged, I am certainly of opinion that the contention of the petitioner cannot be accepted.

5. The prayer for anticipatory bail cannot hence be accepted. The learned counsel for the petitioner submits that great prejudice, hardship and loss would result in if the petitioner were to be arrested and detained in custody on such an allegation. It is for the petitioner to appear before the learned Magistrate and seek regular bail in the ordinary course. I find no merit in the contention that the offence being exclusively triable by a Court of Session, the learned Magistrate may not consider such an application for bail on merits, in accordance with law and expeditiously. This Court has time and again repeated in the decisions reported in **Ali v. State of Kerala (**2000 (2) K.L.T. 280); **Shanu v. State of Kerala** (2000 (3) K.L.T. 452); **Krishnakumar v. State of Kerala** (2005 (1) K.L.D. (Cri) 42 and **P.P. Kader v. State of Kerala** (2005 (1) K.L.D. (Cri) 250) that the mere fact that the offence under Sec.3 of the Act is triable exclusively by a Court of Session does not justify the abdication of jurisdiction by the learned Magistrate under Sec.437 of the Cr.P.C.

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself in the light of the decisions referred above and the directions in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge